IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 491 of 2000.

Date of Decision: 13-8-2007.

State of H P. Appellant.

Versus

Bheem Singh. Respondent.

Coram

Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting[1]? No

For the appellant : Sh.V K Verma, Additional Advocate General.

For respondent : Shri N.K. Thakur, Advocate.

Surinder Singh, J. (oral)

The State has assailed the acquittal of the respondent passed by learned Chief Judicial Magistrate, Chamba in a case tried against him under Section 61 (1) (a) of the Punjab Excise Act, 1914 as applicable to Himachal Pradesh for having allegedly found in possession of ten cartons of country liquor Una No.1 which were being transported by the respondent in Jeep No. HP-44-0444.

In brief, the prosecution case is that on 18.11.1993 Hans Raj (PW6), Investigating Officer, was on petrol duty along with police party. On the way near village Jasouh, the jeep aforesaid being driven by the respondent came there which was stopped and on checking found the above quantity of country liquor. The respondent had shown the permit Exhibit PW6/A but its validity had expired on 28.10.1993, whereas, the incident had taken place on 18.11.1993. Thus, he associated two independent witnesses Amro (PW1) and Mohammad Salim (PW6) and took one bottle from each of the cartons and then took one pint from each of the bottles as a sample and sealed the remaining cartons of bottles and ten pints of

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[1] Whether reporters of the Local papers are allowed to see the judgment? Yes.

samples with seal impression ‘H’. Ruka was sent through Constable Parkash Chand on the basis of which FIR was formally registered. Samples were sent for analysis by MHC Chattar Singh on 22.11.1993 through Constable Balbir Singh for analysis to CTL Kandaghat. On receipt of report Exhibit-PA, the challan was presented in the Court for trial against the respondent.

The charge was put to the respondent under the aforesaid Section of the Excise Act. He pleaded not guilty and claimed trial.

The prosecution examined six witnesses to prove its case. The respondent was also examined under Section 313 of the Code of Criminal Procedure. His case was denial simplicitor. However, no defense evidence was led.

Upon hearing the learned counsel for the parties and going through the record, the learned trial Court acquitted the respondent on the ground that the two witnesses, namely, Amro (PW1) and Mohammad Salim (PW3) did not support the case of the prosecution and further that the statement of Hans Raj (PW6) did not inspire confidence and it was not corroborated by independent witnesses.

I have heard the learned Additional Advocate General and also Mr. N.K. Thakur, learned counsel for the respondent and re-appraised the evidence and have meticulously examined the record. Apart from the grounds of acquittal recorded by the learned trial Court, I have found that in the instant case, the link evidence is not complete and the independent witnesses have not supported the case of the prosecution. In order to prove the charge against the respondent, it is incumbent upon the prosecution to prove that the articles which were recovered from the respondent fell within the mischief of the offence charged. For that, from the date and time of the recovery till the sample is analyzed in the laboratory, the link evidence should be complete. In the instant case, PW6 Investigating Officer has not made even a passing reference to the effect that the case property along with samples were deposited by him with MHC Chattar Singh in the Malkhana nor MHC Chattar Singh when examined in the Court has stated anything about the deposit of the case property along with the samples, with him by the Investigating

Officer. Thus it is not known as to how and when the case property came into the possession of MHC nor there is anything to prove that such case property was ever entered in the Malkhana register properly. The prosecution has to repel all the doubts that from the date of recovery till it was deposited with MHC Chattar Singh, it was never tampered with. Since there is a break in the link evidence, therefore, it cannot be said that the samples which were analyzed by the Chemical Examiner, Kandaghat were of those articles which were recovered from the respondent or that it was never tampered with. In all probabilities, the prosecution is duty bound to repel all the doubts in the prosecution case in order to inspire confidence. Therefore, On the grounds recorded by the learned trial Court and also the reason that there is a missing link as stated above, in my considered opinion, no interference is called for in the impugned judgment of acquittal. Accordingly, the appeal is dismissed. The respondent is discharged of his bail bonds entered into by him during any time of the trial.

(Surinder Singh)
Judge.

August 13,2007.
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